

JOSEPH P. RUSSONIELLO (CSBN 44332)
United States Attorney
JOANN M. SWANSON (CSBN 88143)
Chief, Civil Division
CLAIRE T. CORMIER (CSBN 154364)
Assistant United States Attorney
150 Almaden Blvd., Suite 900
San Jose, California 95113
Telephone: (408) 535-5082
FAX: (408) 535-5081
claire.cormier@usdoj.gov

Attorneys for United States of America

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

KATHLEEN VENTIMIGLIA,)
individually, and as the Guardian Ad Litem)
for STEPHEN VENTIMILIA and KELLIE)
VENTIMILIA,)
Plaintiffs,)
v.)
UNITED STATES OF AMERICA,)
CHAMBLIN-LANDES)
CONSTRUCTION, INC., a California)
corporation, and DOES 1-50, inclusive,)
Defendants)

No. 07-05481 RS

**DECLARATION OF DANIEL R.
TRACY IN SUPPORT OF
DEFENDANT UNITED STATES OF
AMERICA'S MOTION TO DISMISS**

I, DANIEL R. TRACY, make the following declaration in lieu of affidavit, pursuant to 28 U.S.C. 1746. I am aware that this declaration is the legal equivalent of a statement under oath and that it will be filed in the United States District Court for the Northern District of California. Except as otherwise stated, the matters stated in this declaration are true of my own knowledge and, if necessary, I could and would competently testify to them.

1. I currently serve as golf course superintendent at the Monterey Pines Golf Course (MPGC), a position I have held for twenty-three years. I have approximately thirty-

1 eight years of experience working at golf courses, having started as a range hand at Laguna
2 Seca Golf Ranch in Monterey, California in 1970. In 1974, I received a driver's license and
3 began working as a greens keeper on weekends at Laguna Seca. I later worked at the Ford Ord
4 golf course, first as a greens keeper and then as an irrigation specialist. I received a high school
5 diploma in 1976, and was hired in 1979 by Horn & Smith, a grounds maintenance firm that
6 frequently contracted projects on government facilities. At Horn & Smith, I served as
7 superintendent on grounds maintenance jobs. I was hired by the Naval Postgraduate School
8 (NPS) to serve as superintendent of MPG in 1985.

9 2. As superintendent of MPG, I oversee all maintenance of both the golf course
10 and the nearby RV park. My responsibilities include monitoring general course safety,
11 maintaining and ensuring the proper use of equipment, hiring and training all maintenance
12 employees, and purchasing supplies and equipment. I am also responsible for all application of
13 fertilizers, fungicides and other required chemicals, for which I maintain a California pesticide
14 applicator license. Finally, I am in charge of MPG's irrigation system; in this capacity, I
15 handle repairs and usage, monitor well output, and oversee maintenance of pumps and lakes.
16 Approximately every two to three years, I attend the Golf Course Superintendents Association
17 of America's annual convention for purposes of professional development.

18 3. Prior to Mr. Ventimiglia's death, no golfer of which I am aware had ever
19 drowned in Alpha Lake or any other lake at MPG. Although, after Mr. Ventimiglia's death, I
20 was informed that one individual had fallen into the lake in 2004, I had not been made aware of
21 this at the time of the accident, and I am not aware of any injury from the 2004 incident. Apart
22 from those two occurrences, I do not know of any other occurrences of golfers falling into any
23 of the lakes at MPG. I have never personally witnessed any golfer walking, wading or
24 swimming in any of the lakes at MPG, or trying to play a ball from one of the lakes. As
25 course superintendent, I was involved in the decision to place six clear warning signs around
26 the lake to deter golfers from attempting to retrieve golf balls from the lake, behavior we
27 wished to discourage for reasons of safety and speed of play. Attached hereto as **Exhibit A** are
28 true and accurate photographs depicting the warning signs that were placed around Alpha Lake.

1 These warning signs were in place prior to Mr. Ventimiglia's accident, and cost approximately
2 \$700.

3 4. Alpha Lake's primary function was water storage for irrigation. I made the
4 initial suggestion that Alpha Lake be lined with a plastic water-retaining membrane in order to
5 avoid water loss through seepage into the soil. Attached hereto as **Exhibit B** are true and
6 accurate photographs showing the section of this plastic water-retaining membrane that was
7 visible above the water level. Portions of the membrane are also visible in the photographs
8 attached hereto as Exhibit A. Water is a scarce resource in California, and it is important for
9 financial and ecological reasons that we save as much of it as possible; the liner in Alpha Lake
10 allowed us to reduce seepage and therefore increase water retention. Furthermore, we always
11 seek to maximize the amount of water we can store on the course, so as to avoid having to
12 transport it from outside. Lakes with deeper bottoms and steeper slopes allow us to store more
13 water than shallower lakes with less steep grading. Had the Navy been required to design
14 Alpha Lake with more gradual slopes and a shallower bottom, less irrigable water could have
15 been stored in it.

16 5. Although its main function was to store water for irrigation, Alpha Lake served
17 an aesthetic purpose as well. I am informed and believe that essentially all commercially viable
18 golf courses include water features to enrich physical attractiveness and enhance game play. I
19 believe that the installation of fences, guard rails, grab-ropes, or safety buoys in or around
20 MPG's lakes would significantly mar the course's aesthetic characteristics and thereby render
21 it less competitive with other courses. The warning signs which we placed around the lake
22 addressed safety concerns sufficiently without imposing an undue burden on course aesthetics.
23 As a golf course superintendent with over 20 years of experience, it is my belief that warning
24 signs are a wholly reasonable and adequate safety precaution to adopt in order to deter golfers
25 from entering water features or approaching them too closely. I am aware of no rules,
26 regulations, guidelines or golf course planning principles or best practices that prescribe the
27 installation of fences, guard rails, grab-ropes, or safety buoys in bodies of water on golf
28 courses. To the best of my knowledge, these safety features rarely, if ever, appear in ponds and

1 lakes at U.S. golf courses, as they diminish the aesthetic characteristics of the course and create
2 disjunction between the water features and overall course design. Furthermore, I believe that
3 the appearance of safety buoys or grab-ropes might have the perverse effect of actually
4 encouraging golfers to enter water features by giving the unintentional appearance that such
5 behavior is acceptable and expected. Warning signs have the advantage of being easily
6 understandable and visible from many angles; they make very clear that golfers are prohibited
7 from entering or retrieving golf balls from water features.

8 6. The photographs attached hereto as Exhibits A and B also depict the iceplant
9 that grew in and around Alpha Lake at or about the time of Mr. Ventimiglia's accident.

10 7. I declare under penalty of perjury that the foregoing is true and correct.

11 Executed on July 17, 2008 at Monterey, California.

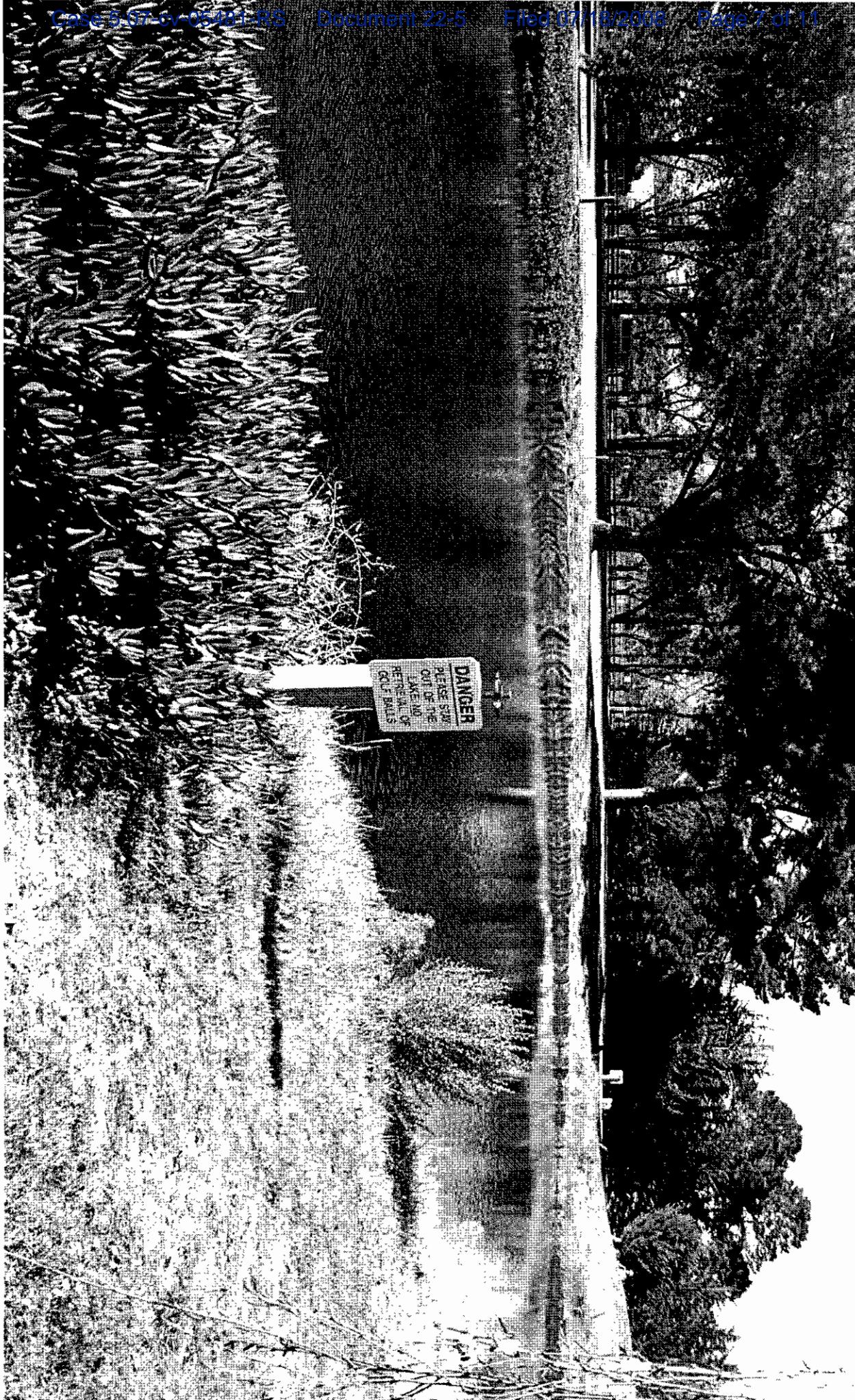
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13 DANIEL R. TRACY

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Exhibit A

Navy Golf Course
(pictures/5 Dec 05)





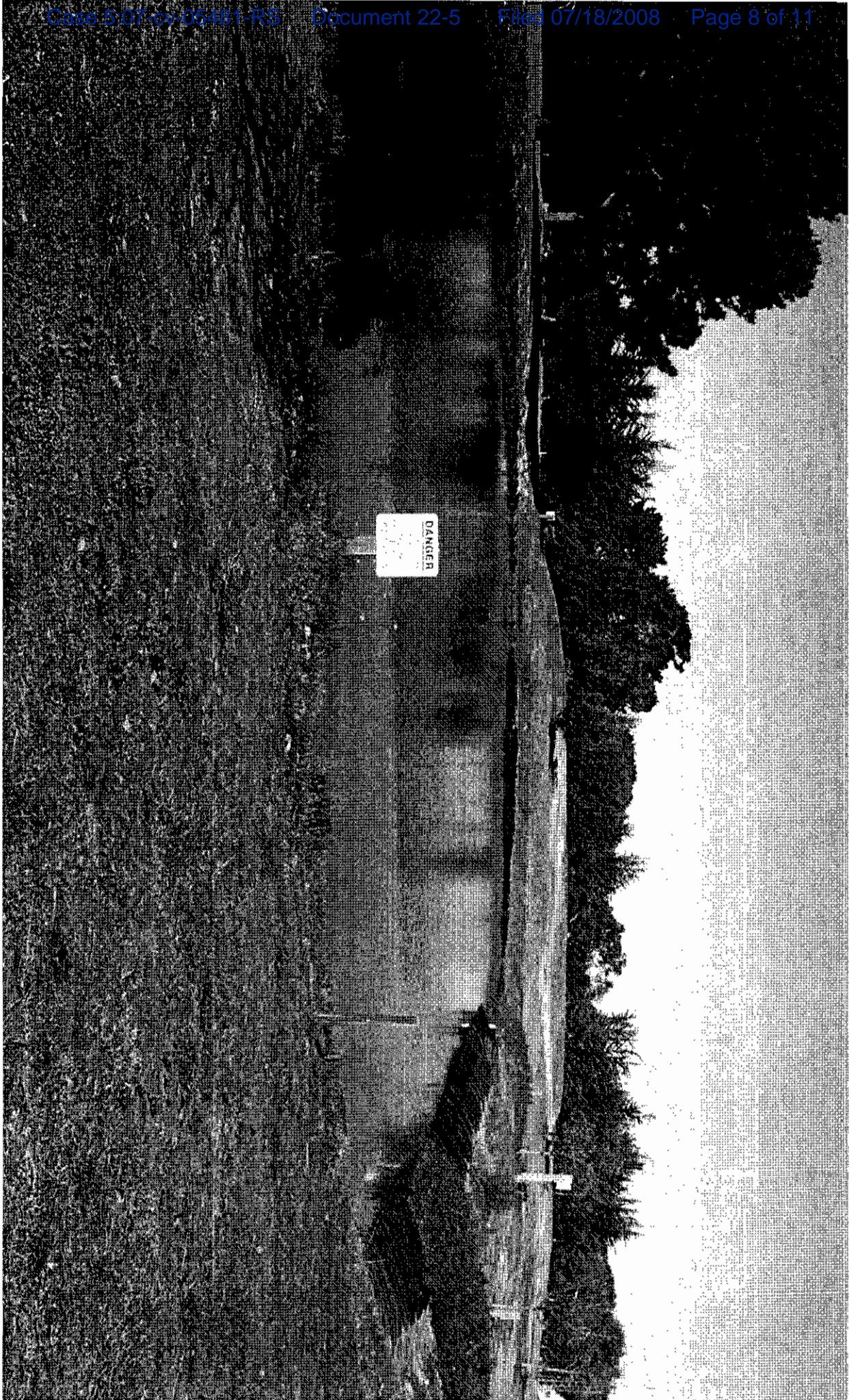


Exhibit B

